



Larissa Donges, Yelyzaveta Aleksyeyeva

Opportunities and limits of civil society's participation in national climate policy in Ukraine

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Summary

With the ratification of the Paris Agreement, Ukraine committed itself to set national climate targets in line with the 1.5° C target. Within this process, NGOs play a crucial role as they push for the needed ambition raising and try to influence concrete policies. Current examples show that NGOs already get involved in the development of certain climate-related strategies, programs and plans and profit from some supporting structures. But there is still much room for improvement on the way to a real participatory climate policy.

Introduction

Recent analyses by NASA and NOAA show that Earth's global surface temperatures in 2019 were the second warmest since modern record-keeping started in 1880. The years 2015 – 2019 have been the five warmest of the last 140 years. But as urgent the need for action is, as insufficient are the so far implemented and planned climate protection measures worldwide. End of 2015, Ukraine agreed in Paris, together with 194 other countries, to limit global warming and its impacts, and to set national climate targets (“Nationally Determined Contribution – NDC”) in line with the 1.5° C target. After the submission of its first NDC in 2015, Ukraine must present updated, more ambitious targets this year. Within this process, Ukrainian civil society and non-governmental organisations (NGOs) play a key role. They act as “watch dogs”, analyse the current NDC, push for more ambitious plans and strategies as well as their rapid implementation. The Ukrainian Government committed itself to reduce emission at least 40 % below 1990 levels by 2030. However, in 1990 Ukraine was one of the world's highest-emitting countries. Thus, the set targets will be achieved without great effort. Already in 2017, Ukraine released 66% less greenhouse gases than in 1990, thus over fulfilled its commitments. Since the reductions are due to the break-up of the Soviet Union, the financial crisis in 2009 and the war in Donbass rather than being a result of ambitious climate policy, the Climate Action Tracker ranks the commitments of Ukraine as “critically insufficient”. Ukrainian NGOs, especially those that are organised in the Ukrainian Climate Network (which was founded in 2000 and unites 30 civil society organisations from various regions of Ukraine), and members of the 100% Renewable Energy Coalition, try to make this weak climate policy public and participate in political decision-making processes. They aim to influence the development of relevant documents and strategies, such as the upcoming second NDC, the Energy Strategy for 2035 or the 2050 Low Emission Development Strategy (LEDS) that was published in 2018. But which opportunities do Ukrainian NGOs have to participate in climate policy? Which legal framework does exist that requires public participation and the involvement of civil society within climate-related policy making? How does the practical implementation of these rights look like? And which barriers hamper meaningful participation of NGOs

and how can they be overcome? These questions were analysed by the Independent Institute for Environmental Issues and Environmental-People-Law in the framework of the international project "Strengthen Civil Society for the implementation of national climate policy", supported by the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB) as part of the International Climate Initiative (IKI).

The right to participate

The legal framework for public participation in environmental decision-making in Ukraine is complex. It consists of the respective provisions of the Aarhus Convention, provisions of sectoral (environmental) legislation on public participation in environmental decision-making of various levels, as well as of legal acts of general nature demanding civic involvement in political decision-making.

The national legal framework is rather clear and detailed on public participation regarding specific projects, policies, plans and programs that may impact the environment and that are thus subject to the Strategic Environmental Assessment or the Environmental Impact Assessment. It is however much more unspecific regarding other environmental policies and planning documents, such as a climate action plan. The laws of Ukraine neither define or explain what 'policy' means and which documents are considered to be 'policy', nor do they regulate public participation in its development. The laws of Ukraine do not consider the NDC, the National Energy and Climate Plan or any other specific policy or planning document related to climate change to be (environmental) policy, neither do they specifically require public participation in their development or revision.

On the other hand, policy documents are usually adopted by acts of the Parliament or the Government and thus do require public participation in their development. The two most recent environmental strategies, the "Main Principles (Strategy) of the National Environmental Policy of Ukraine for the Period until the Year 2020 (2010)" and the "Main Principles (Strategy) of the National Environmental Policy of Ukraine for the Period until the Year 2030 (2019)", were adopted by acts of the Parliament (laws) with broad public participation.

Although the Law of Ukraine on Protection of the Environment (1991) says nothing about public involvement in the development of environmental policy, it requires that ministries and other governmental bodies involve public in the development of environmental programs (Article 6). They shall publish the drafts of environmental programs, so that civil society can study them and prepare its comments to participate in public hearings. Additionally, articles 9 and 21 (on the rights of citizens and environmental NGOs) allow public participation in the development of plans and programs relating to the environment as well as legal normative acts on environmental matters. In 2003, the Ministry of Environment by its Order #168 adopted a procedure for public participation in these processes. However, meanwhile it is dramatically outdated and only covers decisions made by the Ministry of Energy and Environmental Protection.

In 2010, the Government adopted the Resolution of the Cabinet of Ministers of Ukraine No. 996 on Ensuring public participation in development and implementation of the national policy, covering all areas of state policy. Accordingly, all ministries (including the Ministry of Environment) have created respective Public Councils, serving as an official communication and consultation channel between the government and civil society.

NGOs at the table

The above described national legal framework sets a basis for formal participation, but the engagement of NGOs goes beyond that and is affected by numerous aspects. In Ukraine, the Revolution on the Granite in 1990, the Orange Revolution in 2004, and the Revolution of Dignity in 2013-2014 have strongly influenced civic space and the environment for NGOs. Civil society and NGOs have increased their presence in public discourses and policy making, and have become a strong driving force behind ongoing reforms. Ukrainian non-governmental and civil society organizations are mainly focused on democratization and human rights, but also environmental and climate topics became more and more important over the last years, especially after the ratification of the Paris Agreement in 2016. NGOs and think tanks such as Ecoaction, Ecoclub Rivne, OPORA, Greencubator, DiXi Group and others work on climate issues, are more and more respected as competent stakeholders by the government and get formal and informal opportunities to comment e.g. on climate-relevant draft laws, strategies and plans.

In this context, the potential EU accession strongly influences the environment for CSOs as well as and the nature of cooperation between civil society and the state. Signed regulations strongly demand the involvement of civil society actors and foster structures and platforms that enable participation. In order to cooperate with other civil society organizations and the EU, 87 Ukrainian NGOs are members of the Eastern Partnership Civil Society Forum, that was founded under the Eastern Partnership in 2008. Environmental organizations such as Environment-People-Law, Ecological Club Kray, Ecoaction and OPORA are part of the forum and can get involved through the Ukrainian National Platform as well as a working group dealing with environment, climate change and energy security.

Another effective mechanism that opens doors for NGOs to influence climate policy at the local level is the EU-funded Covenant of Mayor East. It supports local authorities in implementing sustainable energy policies and therefore brings together a wide range of actors.

At the national level, civil society can participate in political decision-making through Public Councils or advisory bodies which must be established by each Ukrainian ministry, due to the Cabinet of Ministers Resolution No. 996. The Public Council which was lead until the elections in 2019 by the Ministry of Ecology and Natural Resources (Now Ministry of Energy and Environmental Protection) was

founded in 1996 and aims to ensure public participation in environmental policy in line with the Aarhus Convention. In 1999 the intergovernmental body Inter-Agency Commission on Climate Change was founded, in which the Ukrainian Climate Network represents civil society. Initiated by leading NGOs, public activists, experts, journalists and researchers after Euromaidan, the Reanimation Package of Reforms represents an important network to promote political reforms and enhance the participation of civil society, among others with regard to the energy sector, environmental protection and sustainable development.

Supported by the above mentioned structures and platforms, NGOs succeeded to sit at the table or to bring in positions in several recent climate-relevant processes at the national level. Some actors for instance took part in a public hearing and commented on the Implementation Plan of the Climate Change Policy, adopted in 2016. The National Emission Reduction Plan (NERP) which was approved in 2017 had to be revised due to the engagement of civil society actors. During the development of the 2050 Low Emission Development Strategy (LEDS as of 2018) NGOs participated in an initiative meeting and were consulted afterwards. Some NGOs were also formally involved in the elaboration of the National Renewable Energy Action Plan (NREAP). In order to develop a National Energy and Climate Plan (NECP), required by the European Energy Community, a working group was created that includes besides other stakeholders some NGOs. The NDC revision which started in 2019 seems to be more open for civil society organisation than was the first process. A working group, also including some NGO representatives, meets regularly to set new national climate targets. However, most of the NGOs criticise the process for not being ambitious enough and developed a detailed civil society 2030 Climate Policy Roadmap that they will feed into upcoming climate-relevant political processes.

Barriers and challenges

Even though Ukrainian NGOs already profit from different formal as informal opportunities to get heard by political decision makers and although they have improved their advocacy activities over the last years, many obstacles still exist, that impede equal and effective participation. Being heard does not automatically mean that things really change. Numerous interviews with civil society actors and other national stakeholders revealed fundamental barriers as well as challenges on the legal, structural, institutional and process level.

Representatives of civil society pointed out the fundamental problem that the political will for participatory governance, apart from legally required formal involvement of NGOs, is not very strong among high level decision makers. Furthermore, Ukraine faces huge corruption problems that are connected to a lack of transparency. Within the existing power structures environmental organisations don't have much political weight compared to other lobby groups. On the legal level a full implementation of the Aarhus Convention as well as the Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003

is missing. The framework environmental law (Law of Ukraine on Protection of the Environment) lacks a clear legal basis for the involvement of NGOs in environmental and climate decision-making processes. With regard to the political and structural level, the still ongoing reshuffling of responsibilities after the parliamentary elections and transformation of ministries is a challenge. Stakeholders have to establish new contacts and criticise that a holistic approach in terms of climate protection as well as a consolidation of policy planning processes, including participation, is missing or weak. Within concrete participatory processes a main obstacle is seen in the missing understandable information about the topics and the processes themselves. Moreover, a transparent review of public recommendations and comments is missing. In many cases, the public as well as CSOs do not get responses how their contributions were taken into account or why they were dismissed. One main barrier that hinders many Ukrainian NGOs from participating regularly in climate policy is their missing capacity on different levels. Especially smaller NGOs do not have enough members, volunteers and employees to take part in relevant processes. Often, the money is missing too or the specific technical knowledge to contribute meaningfully.

Improve conditions and opportunities for participation

According to the diverse challenges, the political involvement of NGOs should be strengthened at different levels too. A fundamental prerequisite for fruitful participation is the political will of high level decision makers. The new Government of Ukraine should consider contributions of civil society as a value, not as a barrier in political processes. It should foster free opinion making and transparency to enable are more deliberative democracy. On the legal level, it is crucial to amend articles 9 and 21 of the Law of Ukraine on Protection of the Environment and to implement international obligations on public participation in the development of climate-related strategies, plans and programs. Additionally, national legislation should be revised to create legal requirements for broad and timely information of the public about the development of plans, programs and strategies related to climate change. New laws should oblige officials to give accessible information about the launch of decision-making processes as well as related results. Regarding structural possibilities for improvement, the newly appointed Ministry of Energy and Environmental Protection of Ukraine should improve cooperation with other important ministries, public authorities and science from the beginning on to foster ambitious, participatory climate policy. Long-term structures for participation as well as financial support for such processes should be established. With regard to concrete participation processes, such as the development of climate strategies and action plans, numerous potentials for improvement were identified: As participation gains from various perspectives and experiences a broad variety of NGOs from local to national level should be invited to consultations, workshops etc. A detailed stakeholder mapping can serve as useful tool to get an overview over existing competences and to avoid that only

strong and well-known actors are invited. At the beginning, the format and the aim of the involvement should be clearly communicated to avoid misunderstandings. Furthermore, it is crucial to provide understandable and early information about the planned process as well as the topics to be discussed. Therefore, an online platform should be established, that also includes feedback tools and online consultation, enabling a fair and transparent review process of submitted recommendations. Finally, it is important to continuously develop the skills of NGOs and governmental institutions with regard to the involvement in and organisation of participation processes.

Conclusion

Environmental NGOs, which along with their other activities also participate in national climate policy processes, still form a relatively small group in Ukraine, but are becoming increasingly stronger and more organized. Their engagement is crucial to develop climate targets and measures that meet the Paris Agreement and also reduce dependence from Russia through a sustainable energy policy. NGOs already benefit from some participation rights and concrete opportunities to get involved. However, the framework and offers do not yet meet the requirements of the Aarhus Convention, which Ukraine ratified in 1999. The aim of the new government should be to fully implement the Aarhus Convention and strengthen NGOs' participation rights and opportunities in climate issues. The perspectives and competences of civil society should be included when the next step is to develop the National Energy and Climate Plan (NECP) required by the EU, implement concrete climate protection measures and afterwards submit revised NDCs by 2025.

About the authors

Larissa Donges works as project coordinator in the department "Environmental Law and Participation" of the Independent Institute for Environmental Issues in Berlin. Her work focuses on participation rights and opportunities of civil society and NGOs within national climate policy in Ukraine and Georgia.

E-mail: larissa.donges@ufu.de

Yelyzaveta Aleksyeyeva works as senior lawyer and head of information and analytical department of Environment-People-Law in Lviv, Ukraine. She is specialized in the issues of Ukraine's implementation of international agreements on environmental protection and European human rights standards.

E-mail: e.aleksyeyeva@epl.org

